(48)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 6901 of 2006

Petitioner		Harijan Machhua Sahkari Samiti, Nandeli, Tahsil – Sakti, District Janjgir-Champa, through its President Ramanand Tandan, aged about 45 years, S./o. Shri Hari Ram Tandan, R/o. village Nandeli, Tahsil – Sakti, District – Janjgir- Champa, CG.
	Versus	
Respondents	1)	Chief Municipal Officer, Nagar Panchayat, Sakti, Tahsil – Sakti, District Janjgir-Champa, CG.
	2)	State of Chhattisgarh, through Collector, Janjgir-Champa, CG.

(Writ Petition under Article 226 of the Constitution of India for issuance of appropriate writ(s) /order(s) / direction(s))

S.B: Hon'ble Shri Justice Satish K. Agnihotri.

PRESENT:

Shri C. Jayant Rao, counsel for the petitioner.
Shri Sushil Dubey, Govt. Advocate for the State.

ORAL ORDER
(Passed on 19th April 2007)

1. Clause 7 of the agreement dated 23-8-1997 entered into between Nagar Panchayat, Sakti and petitioner - Harijan Machhua Sahkari Samit, for granting fishing rights to the petitioner clearly provides that in the event there is a break in the pond, Nagar Panchayat, Sakti would not be responsible for any damages caused to the petitioner/society on account of loss of fishes.

2. The petitioner, in this petition, questions the Clause after having accepted the same that if on account of mis-management by the respondent Nagar Panchayat, there is a break and loss, the respondent Nagar Panchayat alone is liable and the petitioner is entitled to reimbursement for the loss occasioned by break and *bandh* of the pond.

3. Be that as it may, it requires resolution of the disputed facts as to whether the break in pond took place on account of mis-management committed by the

respondent – Nagar Panchayat or otherwise, the said question cannot be decided by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. This requires examination of witnesses, documents etc., before deciding the finding of fact.

4. Thus, the writ petition is dismissed as not maintainable. However, in the facts and circumstances of the case, liberty is reserved to the petitioner/society to take recourse to any other forum that may be available to it. Consequently, M.W.P.No.4940/2006 stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

Raju